

W O R C

Western Organization of Resource Councils

February 21, 2003

Country of Origin Labeling Program
Agricultural Marketing Service
USDA Stop 0249, Room 2092-S
1400 Independence Avenue, S.W.
Washington, D.C. 20250-0249

Desk Officer, Office of Management and Budget
New Executive Office Building
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1400 Independence Avenue, S.W.
Washington, D.C. 20250-7602

Via E-Mail: cool@usda.gov

Re: Notice of Request for Emergency Approval of a New Information Collection

To Whom it May Concern:

The Western Organization of Resource Councils appreciates the opportunity to comment on the Agricultural Marketing Service's notice concerning its estimate of the recordkeeping costs associated with interim voluntary Country of Origin Labeling under the Agricultural Marketing Act, as amended by Congress in last year's farm bill.

The Western Organization of Resource Councils (WORC) is a network of grassroots organizations from seven states that include 8,250 members and 46 local community groups. Members of these groups include livestock producers and consumers. WORC and its member organizations were, and are, strong proponents of mandatory Country of Origin Labeling for meat and produce.

WORC associates itself with the comments submitted separately by R-CALF USA and the Organization for Competitive Markets. We urge USDA to withdraw its cost estimate, and recalculate its estimate based on a reassessment of which commodities are covered, what records already exist, and the costs of existing and similar labeling programs. We further urge USDA to publicize its withdrawal, to mitigate the spread of misinformation and misleading reports that have followed the publication of the wholly erroneous \$2 billion estimate by USDA.

The methodology employed by the Agricultural Marketing Service (AMS) in estimating the record-keeping costs associated with Country of Origin Labeling was cursory to the point of being shoddy. Together with the subsequent parroting of the \$2 billion dollar estimate by meatpacking and retailing companies and associations that were opposed to adoption of Country of Origin Labeling creates the impression that the estimate was put forward in an attempt to scare producers and consumers about the costs, in order to weaken support for the new law.

1. The cost estimate is based on a hypothetical, mathematical exercise, rather than on real numbers derived from existing labeling programs. Consumers in countries all over the world already know the country of origin of the food in their stores. USDA itself operates programs, including the school lunch program, which require record-keeping concerning the origin of meat, and many other labeling programs. Instead of looking to the known costs of labeling in other countries, under existing programs, and in states like Florida that already require labeling, USDA seems to have pulled these numbers out of thin air. According to information received in response to a Freedom of Information Act request by Americans for Country of Origin Labeling for documents used in preparing the estimate, USDA used no numbers from any of these programs to make its estimate.¹

2. The cost estimate erroneously assumes that none of the records required are currently available. In fact, the opposite is more nearly true. The estimate is based on the provision in the guidelines for the voluntary program that “self-certification” by producers to purchasers will not be sufficient. This provision of the guidelines is unsupported by law or common sense. As other commenters have pointed out, it is not clear that live cattle or other livestock are “covered commodities” subject to the record-keeping requirements that apply to retail establishments.

Even assuming that livestock producers must keep an auditable record of the origin of their livestock from birth or acquisition to sale, however, the additional record-keeping burden to implement Country of Origin Labeling would be minimal. AMS’ estimate simply asserts, with no documentation, that none of the necessary records are now kept by livestock producers. According to a white paper prepared by AMS concerning its estimate, “AMS does not believe that records pertaining to the origin of covered commodities, as defined by the voluntary guidelines, are already maintained by affected entities. Therefore, the Agency must account for this new recordkeeping burden.”²

AMS belief is misplaced, unfounded and erroneous. Most if not all of the records that would need to be kept by cattle producers, for example, are routinely kept now, and producers would bear no additional cost.

3. AMS’ failure to identify or consider records already kept routinely by entities affected by the regulations violates the letter and spirit of the regulations under which it made the estimate.

¹ This failure comes despite the assertion in the Federal Register notice, that AMS “drew upon its experience with the oversight of auditable and verifiable origin-based documented marketing programs already administered by the agency.” There is no data or analysis in the Federal Register notice or supporting documents made available to the public that can be identified as coming from AMS experience with those marketing programs.

² Agricultural Marketing Service undated White Paper, “Recordkeeping Burden Associated with the Interim Voluntary Country of Origin labeling Program for Beef, Lamb, Pork, Fish, Perishable Commodities, and Peanuts.

Those regulations require that, when estimating the additional regulatory burden of new information collection and record-keeping requirements, that the “time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g. in compiling and maintaining business records) *will be excluded from the “burden”*... [See 5 CFR 1320.3(b)(2), regulations implementing the Paperwork Reduction Act; emphasis added]. AMS made no attempt to identify, let alone exclude from its cost estimate, what records are kept during the normal course of business by entities affected by the Act.

4. AMS used, in every instance, the highest number out of possible ranges of numbers in calculating its estimate (for example, in assuming that all two million U.S. agricultural producers produce covered commodities, that all covered entities would participate in the voluntary program, that all of these entities would have to create new record-keeping systems, that farmers and ranchers average \$25 per hour and that retail employees earn \$50, and so on). The Office of Management and Budget form used by AMS to prepare its Supporting Statement asks for ranges of numbers in the case where the hourly burden is expected to vary widely.³ That form also requires that “estimates should not include burden hours for customary and usual business practices,⁴” a directive AMS completely ignored.

5. AMS consulted with three opponents of Country of Origin Labeling, each with an interest in exaggerating the potential record-keeping cost. None of the three associations consulted by AMS is a potential respondent (i.e. none of the three will have to keep records or collect information required under COOL). At the same time, AMS failed to consult with officials from the state of Florida, which has a mandatory country of origin labeling law and has estimated its cost. Similarly, AMS did not consult with any individual livestock producers to determine what records they already keep as a part of normal business practices; what new records, if any, they might have to keep; or the cost of keeping those new records.

Taken together, these and other deficiencies make AMS’ estimate far short of the “specific, objectively supported estimate of the burden” of record-keeping required by the regulations governing such estimates (5 CFR 1320.8(a)(4). Accordingly, WORC suggests that AMS recalculate its estimate, taking into consideration only those costs of keeping records that will actually be required and may be compelled under the law, that are not already kept as part of normal business practice, and whose collection burden cannot be reduced by various means.

Respectfully submitted,

Mabel Dobbs, Chair
WORC Livestock Committee

³ See “Supporting Statement, Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork Fish, Perishable Agricultural Commodities and Peanuts Under the Authority of the Agricultural Marketing Act of 1946”, question 12, pp. 6-7.

⁴ Ibid.